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Attorney for Plaintiff Sierra Club

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA GREAT FALLS DIVISION

WESTERN ORGANIZATION OF RESOURCE COUNCILS et al.,

Plaintiffs,

VS.

UNITED STATES BUREAU OF LAND MANAGEMENT,

Defendant,

and

STATE OF WYOMING,

Intervenor-Defendant.

Case No. 4:20-cy-00076-BMM

DECLARATION OF MELISSA HORNBEIN IN SUPPORT OF PLAINTIFFS' MOTION FOR COSTS AND ATTORNEYS' FEES

- I, Melissa Hornbein, hereby declare:
- 1. I am a senior attorney with the Western Environmental Law Center in its Northern Rockies Office in Helena, Montana. I served as co-counsel in the above captioned case. I submit this declaration in support of Plaintiffs' motion for an award of attorneys' fees and costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.
- 2. I began working on this case in August 2020, after I was hired by the Western Environmental Law Center. I conducted work on this case including, but not limited to, researching and developing the legal theories, meeting and discussing the matter with Plaintiffs, reviewing the administrative record, drafting and filing briefs, and preparing for and presenting oral arguments.
- 3. I received a B.A. and a B.S. from the University of Washington in 2001, a J.D. from the University of California, Hastings College of the Law in 2008, and an M.S. from the University of Montana in 2009. I attended law school with the intention of practicing environmental law. While attending law school I took classes in administrative law, environmental law, and public lands law, among other topics, and following law school completed a master's degree in Environmental Studies. In law school I interned for two Montana non-profit environmental organizations where I worked on cases related to timber harvest under the National Environmental Policy Act, National Forest Management Act,

and Endangered Species act, as well as issues related to state water law and fisheries instream flows.

- 4. Immediately after law school, I clerked for Justice Brian Morris at the Montana Supreme Court. In 2010, I took a position with the Montana Department of Natural Resources and Conservation, where I functionally split my time between two roles. Part of my time was devoted to in-house counsel duties, working on policy issues and state and federal litigation related to resource management on state lands, including state school trust lands. The larger portion of my time was spent as counsel for the Montana Reserved Water Rights Compact Commission, negotiating federal and tribal reserved water rights on behalf of the state for federal reservations managed by the U.S. Fish and Wildlife Service and Bureau of Land Management, and for the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation.
- 5. In 2015, I became an Assistant U.S. Attorney for the District of Montana with the U.S. Department of Justice. In that position, I worked on a full range of civil litigation, including environmental cases, tort law, and other issues. In that capacity, I litigated cases under the National Environmental Policy Act, Federal Land Policy and Management Act, and Quiet Title Act, among other statutes. In 2019, I briefly returned to the State Department of Natural Resources and Conservation before accepting a position with the Western Environmental Law

Center in 2020. At the Center, my practice is focused on climate-change-related litigation, in particular related to fossil fuel extraction on federal public lands. In my professional capacity, in addition to litigating cases in federal court, I have testified before state legislative committees on issues of environmental, water, and Indian law, and have presented on continuing legal education panels on issues of environmental law including water law, Indian law, and various laws governing fossil fuel extraction on federal lands.

I have represented both the government and later non-profit clients in 6. numerous environmental cases pursued under various state and federal statutes, including the National Environmental Policy Act, the National Forest Management Act, the Federal Land Policy and Management Act, and the Administrative Procedure Act. In my time at the Western Environmental Law Center, these cases include: Western Energy Alliance et. al. v. Biden, 21-cv-13-SWS (D. Wyo. Sept. 2, 2022); Citizens for a Healthy Cmty. v. United States Dep't of Interior, No. 21-CV-01268-MSK, 2022 WL 1597864 (D. Colo. May 19, 2022); 350 Montana v. Haaland, 29 F.4th 1158, 1161 (9th Cir. 2022); W. Org. of Res. Councils v. U.S. Bureau of Land Mgmt., No. 4:20-CV-00076-GF-BMM, 2022 WL 3082475 (D. Mont. Aug. 3, 2022); WildEarth Guardians v. Haaland, No. CV 20-56 (RC), 2022 WL 1773476 (D.D.C. June 1, 2022); WildEarth Guardians v. Haaland, No. CV 17-80-BLG-SPW, 2021 WL 4192883 (D. Mont. Aug. 5, 2021); Montana Env't

- Info. Ctr. v. Bernhardt, No. 119CV00130SPWTJC, 2021 WL 243140 (D. Mont. Jan. 25, 2021); Wyoming v. United States Dep't of the Interior, 493 F. Supp. 3d 1046 (D. Wyo. 2020); California v. Bernhardt, 472 F. Supp. 3d 573 (N.D. Cal. 2020).
- In preparing this motion for costs and fees, I compiled the hours that I 7. spent on this matter, which are reflected in the attached timesheets attached as Exhibit A to this Declaration. I record my time in increments of six minutes (1/10 of an hour). I kept my time and expense reports for this case contemporaneously, and they accurately reflect the actual time spent and expenses incurred. In exercising sound billing judgment, I carefully reviewed my time sheets and omitted excessive, redundant, and otherwise unnecessary time. This exercise of billing judgment resulted in the omission of 15.2 hours of my attorney time from Plaintiffs' fee claim. I also, along with co-counsel, exercised my billing judgment to omit 14.7 hours of time spent by colleagues at our respective organizations (itemized at Exhibit B to this Declaration). This omitted time does not include time spent by Mr. Shoaff, who represented the Sierra club and for whom no recovery is sought. In my opinion, the total hours, expenses, and award I and my co-counsel seek in this matter are reasonable.
- 8. I seek recovery for 147.9 hours of my time in this case, at rates ranging from \$330 per hour to \$350 per hour. I am familiar with prevailing market

hourly rates for attorneys who practice federal environmental law in the District of

Montana. I believe my requested rates are reasonable and consistent with, if not

lower than, market rates for attorneys with similar skills and experience in

Montana.

9. In addition to seeking to recover reasonable attorneys' fees, Plaintiffs

also seek to recover appropriate costs for the litigation. Attached as Exhibit C is a

true and correct copy of an itemized statement of litigation costs that Plaintiffs seek

to recover in this matter. Based on my experience, these costs include those that

would ordinarily be billed to a client in litigation.

Pursuant to 28 U.S.C. § 1748, I declare under penalty of perjury that the

foregoing is true and correct.

Dated this 23rd day of December, 2022.

/s/ Melissa Hornbein

Melissa Hornbein

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Exhibit A. Recorded Time of Melissa Hornbein

Date	Attorney	Description	Rate	Time	Omit	Amount
1/27/20	Hornbein	Call to discuss buffalo/miles city 2.0	330.00	1.00	1.00	-
8/13/20	Hornbein	Review of miles city buffalo RMP draft	330.00	0.80		264.00
		complaint				
8/14/20	Hornbein	Complaint draft review and edits (.8),	330.00	2.90		957.00
		associated legal research (1.1)				
9/15/20	Hornbein	review of PHV docs (.1), other email (.1)	330.00	0.80		264.00
		correspondence, legal research (.6)				
10/1/20	Hornbein	review D's answer	330.00	2.00		660.00
10/21/20	Hornbein	call re. pendley impact on litigation	330.00	1.20	1.20	-
11/23/20	Hornbein	review of feds' MTD/MTT	330.00	2.70		891.00
12/10/20	Hornbein	Powder River amended complaint	330.00	1.80		594.00
1/21/21	Hornbein	review of MTD	340.00	2.20		748.00
1/26/21	Hornbein	review of Pendley claims related issues	340.00	2.30	1.30	340.00
		(1.3), call w/N.Shoaff, S. Hernandez (1)				
2/1/21	Hornbein	finalizing brief in resp. to MTD	340.00	4.50		1,530.00
2/4/21	Hornbein	hearing prep - re-reading pleadings	340.00	1.00		340.00
2/5/21	Hornbein	hearing prep - legal research	340.00	3.10		1,054.00
2/9/21	Hornbein	hearing prep	340.00	2.20		748.00
2/11/21	Hornbein	hearing prep	340.00	3.20		1,088.00
2/12/21	Hornbein	hearing prep (5.2) and review of feds reply brief (1.2)	340.00	6.40		2,176.00
2/15/21	Hornbein	Hearing prep, incl first moot w/SH, NS (1.5)	340.00	6.30		2,142.00
2/16/21	Hornbein	hearing prep and second moot (1)	340.00	6.80		2,312.00
2/17/21	Hornbein	hearing prep	340.00	5.80		1,972.00
2/18/21	Hornbein	hearing prep (3.4) and hearing (.7)	340.00	4.10		1,394.00
2/24/21	Hornbein	reviewing Morris decision on D's motion	340.00	1.50		510.00
,,_,	1101110 1111	to dismiss (1), summarizing and emailing	2.0.00	1.00		210.00
		clients re. same (.5)				
2/25/21	Hornbein	media interaction	340.00	1.00	1.00	_
3/8/21	Hornbein	review of pallid sturgeon expert report draft	340.00	2.60	2.60	_
3/12/21	Hornbein	client call re. possible inclusion of ESA	340.00	1.00	1.00	_
		claim		-100	-100	
3/12/21	Hornbein	review of NOI draft	340.00	1.40	1.40	_
3/23/21	Hornbein	PRB 2.0 discussion w/clients to discuss	340.00	1.00	1.00	-
		possible ESA claim				
3/30/21	Hornbein	finalizing, review, filing of 2nd amended	340.00	1.30		442.00
		complaint				
4/6/21	Hornbein	review of proposed JCMP and associated	340.00	0.60		204.00
		communications w/counsel				
4/9/21	Hornbein	call to discuss JCMP (.2) and follow up	340.00	0.40		136.00
		communications (.2) with DOJ				
8/18/21	Hornbein	draft/finalize/file motion for extension of	340.00	1.50		510.00
		AR and subsequent deadlines				
8/26/21	Hornbein	update scheduling order	340.00	0.20		68.00
8/26/21	Hornbein	review MSJ outline (.2) legal research for	340.00	1.40		476.00
		msj (1.2)				
10/6/21	Hornbein	review of admin record	340.00	3.10		1,054.00
10/8/21	Hornbein	finalize/file motion for extension	340.00	1.00		340.00
10/11/21	Hornbein	review of complaint and PRB 1.0 order	340.00	2.50		850.00
		(prep for MSJ)				

Date	Attorney	Description	Rate	Time	Omit	Amount
10/13/21	Hornbein	call with NS and SH (.5) to discuss brief, drafting legal/procedural hx/facts (1)	340.00	1.50		510.00
10/15/21	Hornbein	review of AR/ outlining facts section SJ brief	340.00	1.60		544.00
10/18/21	Hornbein	work on facts portion of SJ brief	340.00	2.80		952.00
10/20/21	Hornbein	drafting intro/facts/standing sections and associated record review for citations (3.5), calls w/shiloh re. same (.3)	340.00	3.80		1,292.00
10/21/21	Hornbein	call w/SH, NS re. SJ brief (.7), record review and working on facts section (1.4)	340.00	2.10	0.20	646.00
10/22/21	Hornbein	record review for SJ and drafting/editing facts	340.00	1.90		646.00
10/23/21	Hornbein	drafting/editing SJ brief	340.00	4.60		1,564.00
10/25/21	Hornbein	review/edits to SJ brief	340.00	2.80		952.00
10/27/21	Hornbein	correspondence re. SJ brief	340.00	0.30		102.00
10/29/21	Hornbein	review of final draft brief before filing (SJ)	340.00	1.30		442.00
11/19/21	Hornbein	call w/clerk and emails w/co-counsel and opposing counsel re mistaken scheduling order	340.00	0.40		136.00
12/16/21	Hornbein	call with NS and SH re. DOJ request for extension (.1) and call w/DOJ counsel re. same (.5)	340.00	0.60	0.10	170.00
1/3/22	Hornbein	updating deadlines following D's mt to extend briefing	350.00	0.20		70.00
1/10/22	Hornbein	review of and email coms re. press release and appropriate contact person	350.00	0.40	0.40	-
1/18/22	Hornbein	review of DOJ SJ brief	350.00	1.40		490.00
1/24/22	Hornbein	review of not. of supp authority and emails re. same	350.00	0.20		70.00
1/24/22	Hornbein	review of record for reply brief (requested docs for shiloh)	350.00	0.30		105.00
1/30/22	Hornbein	edit reply brief, draft intros, email to SH.	350.00	2.20		770.00
1/31/22	Hornbein	review of NS email re. brief, reference to DOJ briefs, response email re. same.	350.00	0.30		105.00
2/1/22	Hornbein	co-counsel email exchanges re. finalizing reply brief	350.00	0.20		70.00
2/3/22	Hornbein	edit reply brief	350.00	2.30		805.00
2/4/22	Hornbein	email exchanges re. finalizing and filing brief w/NS and SH	350.00	0.20		70.00
2/22/22	Hornbein	communication re. and calendar moots (.2), review pleadings (2.5)	350.00	2.70		945.00
2/25/22	Hornbein	oral argument prep	350.00	2.30		805.00
2/25/22	Hornbein	review fed notice re anticipated motion for remand, declarations, and WY response/reply (.7) call with NS and SH re same (.4) client email re. same (.3)	350.00	1.40		490.00
2/28/22	Hornbein	email to clients re. PRB (.3), call w/K. Tisdel (.2), calls w/NS and SH (.6), call to DOJ counsel (.2), f/u email to clients (.3)	350.00	1.60		560.00
2/28/22	Hornbein	call w/NS, SH	350.00	0.30	T	105.00

Date	Attorney	Description	Rate	Time	Omit	Amount
3/1/22	Hornbein	texts with KT, NS (.2), talk to colleague (.2), talk to SH (.1), call re. remand for BFO/MCFO RMPs (.2), review of brief re. remedy request, review of past emails (.4), call w/NS (.2)	350.00 1.30			455.00
3/2/22	Hornbein	email exchanges with SH and NS re. response to DOJ email on remand and email to DOJ counsel (.5)	350.00	0.50		175.00
3/2/22	Hornbein	email exchanges w/co-counsel re. BLM response to our requested remand conditions (.2), draft and send response to DOJ counsel (.3)	350.00	0.50		175.00
3/3/22	Hornbein	legal research re. denial of vol. remand request	350.00	0.50		175.00
3/4/22	Hornbein	calls w/SH and NS re. PRB (.5), review gov motions/brief for remand (.5), email clients/additional emails w/NS/SH (.3)	350.00	1.30		455.00
3/5/22	Hornbein	client and co-counsel emails (and some legal research) re. proposed next steps	350.00	0.70		245.00
3/7/22	Hornbein	hearing prep	350.00	2.20		770.00
3/8/22	Hornbein	review initial draft of response to motion for remand, reference motion and declarations, respond to SH re. same.	350.00			315.00
3/8/22	Hornbein	oral arg prep	350.00	1.50		525.00
3/8/22	Hornbein	review/edit response to mt for remand (2nd version)	350.00	0.60		210.00
3/9/22	Hornbein	oral argument prep	350.00	1.70		595.00
3/9/22	Hornbein	oral argument prep (2.2) and moot (1.6)	350.00	3.80		1,330.00
3/9/22	Hornbein	review/edit/cite check response to mtn for remand	350.00	1.00		350.00
3/9/22	Hornbein	oral argument prep - re-reading briefing	350.00	1.20		420.00
3/10/22	Hornbein	email update to clients (.3), email moot info/relevant background to colleagues (.2)	350.00	0.50		175.00
3/10/22	Hornbein	oral arg prep (refining outline)	350.00	2.20		770.00
3/11/22	Hornbein	oral argument prep (2.6), and moot with SH, NS, B. Chillcott (1.5)	350.00	4.10		1,435.00
3/13/22	Hornbein	oral argument prep	350.00	3.70		1,295.00
3/14/22	Hornbein	oral argument prep (2.3), travel to/from argument (3), argument (1.5), pre-argument courtroom time (.4), f/u client debrief w/co-counsel (1), (email update to clients (.2)	350.00 8.40		2,940.00	
3/15/22	Hornbein	call w/Svein newman re. oral arg.	350.00	0.20		70.00
8/3/22	Hornbein	texts, emails, phone calls press release (.5), and read/analyze order on SJ (1)	350.00	1.50	0.50	350.00
8/4/22	Hornbein	talk to reporters about PRB win	350.00	0.50	0.50	-
8/4/22	Hornbein	work on media related to PRB win at request of Jackie, Brian, Renata	350.00	0.70	0.70	-
10/31/22	Hornbein	review/edit remand scoping comments	350.00	2.30	2.30	-
B		r Professional Services: Melissa Hornbein		163.10	15.20	50,710.00

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Date	Attorney	Description	Rate	Time	Omit	Amount
•	<u>-</u>	T	otal Hours	163.10		
		Total Hou	Total Hours Omitted			
		Total Hours after	· Omisions	147.90		

Total Attorneys' Fees \$ 50,710.00

Exhibit B. Other Omitted Time

Date	Attorney	Description	Rate	Time	Omit	Amount
5/21/20	Kyle Tisdel	Miscellaneous review (.7); confer w/		1.90	1.90	-
		clients (1.2);				
8/27/20	Kyle Tisdel	confer w/ staff (.6); review complaint (.5)		1.10	1.10	-
10/19/20	Kyle Tisdel	review (.7); confer w/ Hornbein (.5);		1.50	1.50	-
		confer w/ clients (.3);				
10/20/20	Kyle Tisdel	confer w/ clients (.4); confer w/ attys (.3);		0.70	0.70	-
10/21/20	Kyle Tisdel	confer w/ Hornbein (.3); confer w/ clients		0.90	0.90	-
		(.6);				
12/16/20	Kyle Tisdel	confer w/ attys (.4); review (.2)		0.60	0.60	-
3/14/22	Kyle Tisdel	attend hearing via zoom (1.5)		1.50	1.50	-
8/3/22	Kyle Tisdel	review (1); confer w/ staff (.5)		1.50	1.50	-
8/4/22	Kyle Tisdel	confer w/ staff (.8)		0.80	0.80	-
1/7/22	Emily Qiu	Reading through and proofing press release		0.10	0.10	-
2/1/22	Emily Qiu	Reply brief legal cite check		1.10	1.10	-
10/27/21	Emily Qiu	Cite checking pages 10-17 of brief and	·	1.60	1.60	-
		proofed pages 1-18.				
10/28/21	Emily Qiu	Final proof and read through of SJ brief		1.40	1.40	-
	For Pro	ofessional Services: Kyle Tisdel/Emily Qiu		14.70	14.70	-

Total Hours	14.70
Total Hours Omitted	14.70
Total Hours after Omisions	-

Total Attorneys' Fees \$ -

Exhibit C. Litigation Costs

		Actual	Omit	Tot	tal Costs
Court Fees					
8/27/20	Filing Fee, receipt # 0977-2533723	\$ 400.00		\$	400.00
				\$	-
	Total Court Fees	\$ 400.00	\$ -	\$	400.00
Reproduction a	and Printing				
8/28/20	Taos Copier Log. B&W 74 x 0.20 = \$14.80.	\$ 14.80		\$	14.80
10/6/20	Taos Copier Log 10/06/20. B&W 6 x 0.20 = \$1.20.	\$ 1.20		\$	1.20
	Total Reproduction and Printing	\$ 16.00	\$ -	\$	16.00
Postage & Deliv	very				
8/31/20	Taos. USPS: Service of Process - summons and complaint.	\$ 22.80		\$	22.80
	Total Postage & Delivery	\$ 22.80	\$ -	\$	22.80
	Total Case Expenses	\$ 438.80	\$ _	\$	438.80

From: MTD_CMECF@mtd.uscourts.gov
To: MTD_CMECF@mtd.uscourts.gov

Subject: Activity in Case 4:20-cv-00076-BMM-JTJ Western Organization of Resource Councils et al v. United States Bureau

of Land Management Filing Fee Received

Date: Thursday, August 27, 2020 11:54:39 AM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Montana

Notice of Electronic Filing

The following transaction was entered on 8/27/2020 at 11:53 AM MDT and filed on 8/27/2020

Case Name: Western Organization of Resource Councils et al v. United States Bureau of

Land Management

Case Number: 4:20-cv-00076-BMM-JTJ

Filer:

DocumentNo document attached

Number:

Docket Text:

Filing fee: \$ 400.00, receipt number 0977-2533723 (MMS)

4:20-cv-00076-BMM-JTJ Notice has been electronically mailed to:

Shiloh Silvan Hernandez hernandez@westernlaw.org

Melissa Anne Hornbein hornbein@westernlaw.org

4:20-cv-00076-BMM-JTJ Notice has been delivered by other means to:

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44	522 Tenmile South	0	0
45	524 SonDesTort ESA	0	0
46	528 401 Certification	0	0
47	531 Mexican Wolf 10(j)	0	0
48	535 RGNF Plan Revision	0	0
49	600 ClimateEnergyCaseDev	0	0
50	620 Mancos Lease	0	0
51	621 Mancos RMP	0	0
52	632 Monument Butte	0	0
53	633 Powder River 2.0	0	6
54	651 O&G Admin Matters	0	0
55	656 North Fork APD	0	0
56	657 North Fork RMP	0	0
57	659 NorthForkLeaseSale	0	0
58	668 NM Climate Change	0	0
59	671 San Juan Basin Coal	0	0
60	673 MT BLM Climate	0	0
61	675 Navajo Mine	0	0
62	681 CCAE	0	0
63	686 Federal O&G Policy	0	0
64	688 North Fork	0	0
65	693 San Juan Basin O&G	0	0
66	694 Dirty Energy	0	0
67	695 Clean Energy	0	0
68	696 Climate Resiliency	0	0
69	702 Mancos APD	0	0
70	712 Colo River RMP	0	0
71	714 SFNF Lease	0	0
72	715 GunnisonRvrDrlg	0	0
73	716 Western Leasing	0	0
74	718 WEA Intervention	0	0
75	727 BLMOnlineLeasingFOIA	0	0
76	728 WillSourceExpLeases	0	0
77	729 Piceance Lease Sale	0	0
78	732 MT O&G Leasing	0	0
79	733 Methane Rescission	0	0
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pg. 2 of 4



Ponder River



TAOS 318 PASEO DEL PUEBLO NORTE TAOS, NM 87571-9998 (800)275-8777

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Product	Qty	Unit Price	Price
First-Class Mail@	1	Price	\$1.40
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Tuesday 09/01/ Certified USPS Certifie	d Mail	#	\$3.55
7019297000007 Return Receipt	691163	8	\$1.70
(elec) Return Receipt USPS Return R	ongint	#	\$2.85
9590940248649 Total	032815	831	\$9.50
Grand Total:			\$22.80
and the last last last last last last last last			
Credit Card Remi Card Name:VI Account #:XX	SA XXXXXX	хххх8190	\$22.80
Approval #:7 Transaction AID:A0000000 AL:VISA CRED PIN:Not Requ	#:562 031010 IT		Chip
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